

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL E. ROBERTSON	:	CIVIL ACTION
	:	
v.	:	
	:	
U.S. ATTORNEY GENERAL JANET	:	
RENO	:	No. 00-CV-5728

MEMORANDUM ORDER

J. M. KELLY, J.

APRIL 5, 2001

Presently before the Court is a Request for Default Judgment filed by the Plaintiff, Paul E. Robertson ("Robertson"). After being denied leave to proceed with his case in forma pauperis, Robertson filed his pro se Complaint on November 22, 2000. Although Robertson served the Defendant, United States Attorney General Janet Reno ("Reno"), with a summons and copy of the Complaint on December 18, 2000, Federal Rule of Civil Procedure 4(i)(1) requires that plaintiffs serve both the Attorney General and "the United States attorney for the district in which the action is brought or . . . by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney. . . ." Fed. R. Civ. P. 4(i)(1)(A). Robertson did not serve process on the United States Attorney's Office until January 5, 2001. Service therefore did not become effective until then.

By February 23, 2001, Reno had not responded to Robertson's Complaint. On that day, Robertson filed the instant Request for Default Judgment. Because Reno had sixty days from the date of

effective service in which to respond to the Complaint, however, Robertson should not have filed his Request for Default Judgment until March 6, 2001. Robertson's Request was therefore prematurely filed with the Court.

Reno still did not respond to the Complaint, however, until March 30, 2001. Assuming Robertson's prematurely filed Request became effective on March 6, three weeks passed during which time default judgment was appropriate. Reno explains that her tardiness in responding to the Complaint was caused by an "administrative error." Def.'s Resp. at 2.

Robertson filed his Request pursuant to Federal Rule of Civil Procedure 55, which allows parties to seek default judgment "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise. . . ." Fed. R. Civ. P. 55(a). Courts should, however, dispose of cases on the merits whenever practicable. See, e.g., Jorden v. National Guard Bureau, 877 F.2d 245, 251 (3d Cir. 1989). Reno's tardiness has caused no appreciable prejudice to Robertson, and her explanation demonstrates mere negligence, not flagrant bad faith or contumacious behavior. Id. Moreover, "[n]o judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory

to the court." Fed. R. Civ. P. 55(e). Given the procedural posture of this case, Robertson has yet to present the Court with satisfactory evidence that he has a right to relief. Finally, Reno has corrected her mistake by filing an Answer to Robertson's Complaint. Accordingly, the Court will deny Robertson's Request.

AND NOW, this 5th day of April, 2001, in consideration of the Request for Default Judgment filed by Robertson (Doc. No. 7) and the Opposition thereto filed by Reno, it is **ORDERED** that the Request for Default Judgment is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.